in decreeing specific performance, brushes aside the express terms of the contract, and in an attempt to adjust the rights of the litigants equitably, lays down its own terms. The equity of the plaintiff's position was far from strong. He had no better excuse for the delay in payment than oversight, and he had permitted waste on the premises. Consequently, his remissness was very properly reflected in the decree. Note that he was required, as a condition precedent to receiving conveyance, to pay the entire unpaid purchase price within 30 days, although under the terms of the contract he would have had some 28 years in which to pay. It has been argued that the court must enforce the contract literally or not at all,—that it cannot make over the agreement of the parties. But this argument is not tenable. Decreeing relief lies wholly within the discretion of the court and the terms of relief may be moulded to fit the circumstances of each case. If the plaintiff's equities are strong the decree may be lenient; if weak, harsh; if too weak, relief may be refused altogether. Ordinarily, however, compensation can be required for the delay without punishing it by forfeiture. In *Noyes* v. *Bragg,* 220 Mass. 106, another suit by vendee against vendor, it is true that the appellate court reversed the superior court, which had ordered present payment of future installments, and ordered the contract to be performed literally according to its terms, thereby giving the vendee the benefit of the installment plan of payment. However, in that controversy the vendor was at fault and the conduct of the vendee was unimpeachable. In *King* v. *Ruckman,* 24 N. J. Eq. 556, the court, instead of accelerating the date of payment, as in the principal case, or enforcing the terms of the contract literally, as in *Noyes* v. *Bragg,* actually extended the time of payment beyond that agreed to by the parties. The vendor had wrongfully kept the vendee from taking possession for five years beyond the agreed date, and he was very properly penalized for his conduct. So the terms of the contract are not necessarily sacred. Yet courts have not always recognized the possibility of the decree *cy pres,* and have often contented themselves with a literal enforcement of the contract or nothing. The obvious equity of a modification of the agreed terms under certain circumstances compels commendation of such action. The chancellor is thereby given a really effective weapon for the enforcement of fair dealing in business transactions. The principal case is worthy of note as an illustration of the exercise of such power.

STATUTE OF FRAUDS—SUFFICIENCY OF MEMORANDUM—OMISSION OF TERM FAVORABLE TO THE DEFENDANT.—Vendee seeking specific performance of a contract for sale of land, stated as one of the terms agreed upon that he (vendee) was to assume a mortgage for $800 then existing on the property, and to give an additional mortgage for $1,200 to make up the $2,000 balance which would be due under the contract. The memorandum offered to prove the contract, although apparently sufficient in all respects to satisfy the Statute of Frauds, made no mention of this mortgage of $800 or its assumption by the vendee, but indicated rather that the vendee was to give a mortgage for the entire $2,000. *Held,* by a divided court, that the memorandum

was insufficient because of the omission of this term. *Gendleman* v. *Mongillo* (Conn., 1921), 114 Atl. 914.

On its face the majority view seems merely to be in accord with the established rule that the memorandum must include all the essential terms agreed upon and that the time and manner of payment are essential terms. *Baird Inv. Co.* v. *Harris,* 209 Fed. 291; *Lester* v. *Heidt,* 86 Ga. 226, 10 L. R. A. 108; *Ebert* v. *Cullen,* 165 Mich. 75, 33 L. R. A. [n. s.] 84. It is probably true that the parties to the transaction did not themselves regard the omitted term as essential, since they did not deem it necessary to include it in a memorandum which was in other respects apparently complete, nor did defendant object to its sufficiency on this ground at the trial. But what the parties thought cannot be allowed to modify the requirements of the statute. *Wright* v. *Weeks,* 25 N. Y. 153; *Stewart* v. *Cook,* 118 Ga. 541; *Hamby* v. *Truitt,* 14 Ga. Ap. 515. On another ground, however, the correctness of the decision is not so evident. It is difficult to understand in what way the term omitted from the memorandum could be detrimental to the vendor. Presumably, it was for his benefit—*e. g.,* to save him the trouble of paying off this mortgage and then accepting one for a like amount from the vendee as part of the purchase price. In England it has been held that where the memorandum omits a term of the verbal agreement which is for the defendant's benefit the defendant cannot set up the statute if the plaintiff is willing to admit this term as part of the contract. *Martin* v. *Pycroft,* 2 D. M. & G. 785. See also *Vouillon* v. *States,* 25 L. J. (Ch.) 875, and *North* v. *Loomes* [1919], 1 Ch. 378. There appear to be no American decisions directly in accord with the English case, but even so, it is somewhat difficult to understand why the court in the principal case should have been so solicitous for the defendant's rights under the statute. Surely nothing could be further from the intent and spirit of the Statute of Frauds than putting a penalty upon the plaintiff's honesty in offering the defendant the benefit of a term which he, the defendant, would himself have been prevented from claiming by operation of the statute and the parol evidence rule. It is to be regretted if the English modification is not open to adoption by the American courts, as this decision by the Connecticut court would seem to indicate. It may be observed, however, that there is no indication in the court's opinion that these English authorities were called to its notice.

TRIAL—GENERAL EXCEPTION TO INSTRUCTIONS GIVEN TO JURY.—Where the record showed an absence of exceptions to the charge, but counsel averred that he had asked for an exception and the court sealed it for him *nunc pro tunc,* this was regarded as a general exception to the charge, but *held* that under a general exception only such matters as were basic and fundamental could be assigned as error. *Marshall* v. *Carr* (Pa., 1921), 114 Atl. 500.

This decision is in accord with previous Pennsylvania decisions on this question, and the courts of that state have declared the following to be basic and fundamental errors and assignable under a general exception: "All actual errors of law"; "material matter so inadequately presented as to be likely to mislead the jury"; "failure of whole charge to present the material